IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

TUESDAY, THE 5TH DECEMBER 2006 / 14TH AGRAHAYANA 1928

WP(C).No. 31760 of 2006(E)

PETITIONERS:

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1. K.P. SOMAN, PLAMPARAMBIL HOUSE,
   PADIYADI, NEDUMBRAM, THIRUVALLA.

2. USHA SOMAN, WIFE OF DO. DO.

3. S. RAJENDRAN, MUNDUCHIRAYIL HOUSE,
   PADIYADI, THIRUVALLA.

BY ADV. SRI.V.G.ARUN
SRI.T.R.HARIKUMAR

RESPONDENTS:

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1. THE SPECIAL SALE OFFICER,
   THIRUVALLA URBVAN CO-OPERATIVE BANK,
   OFFICE OF THE ASSISTANT REGISTRAR OF
   CO-OPERATIVE SOCIETIES, THRIUVALLA.

2. THIRUVALLA URBAN CO-OPERATIVE BANK
   LTD.NO.477, THIRUVALLA, FREPRESENTED BY ITS
   SECRETARY.

BY SENIOR GOVT. PLEADER SRI.P.N.SANTHOSH.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M. JAMES, J.

W.P.(C) No. 31760 of 2006

Dated this the 5th December, 2006.

J U D G M E N T

The petitioners have availed three loans of Rs.5 lakhs each from the second respondent Bank, as per the conditions that has been mutually agreed to between the writ petitioners and the second respondent Bank. The inevitable happened and the default occurred, because of the failure of the business of the petitioners. Bank proceeded with Arbitration. On 13.9.2004, the Arbitrator fixed the amount due to the second respondent Bank as Rs.23, 85, 812/=, through three different awards. The award was communicated, demand notice issued, and all the other proceedings were completed. But the writ petitioners did not pay any amount due to the second respondent. Therefore, the first respondent, the Special Sale Officer, notified for public auction and sale of the properties pledged with the second respondent, while obtaining loan, as per the notification dated 23.10.2006. The writ petitioners are, therefore, before this Court, praying to quash Exts.P1 to P3 demand notice and also Ext.P4 auction sale notice issued to them. They also pray for payment of the amounts through monthly instalments.

2. When the writ petition came up for consideration, I have heard the arguments advanced by the learned counsel for the writ petitioners, and the learned Standing Counsel, Sri.Subash Chand, appearing for the second respondent Bank.

3. The learned counsel appearing for the petitioners submit that the entire One acre Fifty Cents of the property, which would fetch an amount of Rs.50 lakhs, as per the local market rate, is not necessary to be sold for realisation of Rs.23,85,812/= due to the second respondent Bank, and a portion of the property would suffice, and, therefore, it is prayed that he may be permitted to sell the same through private sale, without the property being placed under public auction.

4. The learned standing counsel appearing for the second respondent Bank brought to my notice the directions issued to the second respondent by the Reserve Bank of India on 18.9.2006, in which, lot of restrictions had been imposed in the activities of the bank, and also directing it to recover the entire amount due to the Bank from the Debtors.

5. After hearing both sides, and considering the facts that are placed before me, I dispose of the writ petition, staying the sale proceedings initiated, in respect of the properties of the writ petitioners, by respondents 1 and 2, under Ext.P4, for a period of five months, on condition that the writ petitioners pay an amount of Rupees One Lakh each per month, during the above period of five months, first instalment being remitted on or before 30th of instant, and the remaining four instalments during the next succeeding months. In the above period of five months, the writ petitioners shall be entitled to sell the properties mortgaged with the second respondent to the private parties, with the supervision and control of respondents 1 and 2. The sale proceeds so received of that properties shall be remitted towards the balance outstanding amount due to the second respondent Bank together with the expenses that may be fixed by respondents 1 and 2.

6. On the completion of the payment of the entire amount due to respondents, the bank shall return all the documents to the writ petitioners, free of any encumbrances on the property, who shall then be free to further alienate the properties, according to the law.

7. In case of any violation of conditions stipulated above, the respondents are free to proceed with the sale, as per Ext.P4 notification, without any further proclamation, starting from the stage at which it is now stayed.

J.M. JAMES,
JUDGE

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